Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

85-1370

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

October, 1985

ARKANSAS WRITERS' PROJECT, INC., APPELLANT

V.

CHARLES D. RAGLAND, COMMISSIONER OF REVENUE OF THE STATE OF ARKANSAS, APPELLEE

ON APPEAL FROM
THE SUPREME COURT OF ARKANSAS

JURISIDICTIONAL STATEMENT
STATE CIVIL CASE

John R. Clayton
HOUSE, WALLACE, NELSON & JEWELL, P.A.
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26 pp

PRELIMINARY MATTERS

Question Presented

Did the Arkansas Supreme Court err in finding that a state statute exempting sales of newspaper and certain magazines from a general sales tax, while sales of appellant's magazine are taxed, does not violate the First Amendment rights of the appellant?*

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*The parties to the proceeding in the Arkansas Supreme Court were Arkansas Writers' Project, Inc., Appellant herein, and Charles D. Ragland, Commissioner of Revenue for the State of Arkansas, Appellee herein.

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DESIGNATION OF CORPORATE RELATIONSHIPS

Arkansas Writers' Project, Inc., filing this Jurisdictional Statement as appellant in this proceeding, states that:

A. This is its original Designation of Corporate Relationship.

B. Arkansas Writers' Project, Inc. is not owned by any parent corporation.

C. Journal Publishing, Inc., is a subsidiary of Arkansas Writers' Project, Inc. Arkansas Writers' Project, Inc. does not have an ownership interest in any other subsidiaries other than wholly-owned subsidiaries.

D. The only affiliate of Arkansas Writers' Project, Inc. is Arkansas Business Limited Partnership, an Arkansas limited partnership.

Dated February 10, 1986.

NOTICE OF BELIEF THAT PARTY BELOW LACKS INTEREST IN THE OUTCOME

TO: Joseph F. Spaniol, Jr.
Clerk of the Court

Pursuant to Rule 10.4 of the Rules of the Supreme Court of the United States, you are hereby notified that appellant believes that appellee has no personal interest in the outcome of this appeal. He is the Commissioner of Revenue of the State of Arkansas, and he is named only in that capacity in the Complaint below and in the judgment issued, from which this appeal is taken.

Respectfully submitted,

HOUSE, WALLACE, NELSON & JEWELL, P.A.
1500 Tower Building
Little Rock, Arkansas 72201
(501)3759151

By:/s/ John R. Clayton

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

ARKANSAS WRITERS' PROJECT, INC.
APPELLANT

V.

CHARLES D. RAGLAND,
COMMISSIONER OF REVENUE
OF THE STATE OF ARKANSAS,
APPELLEE

JURISDICTIONAL STATEMENT - STATE CIVIL CASE

Question Presented

Did the Arkansas Supreme Court err in finding that a state statute exempting sales of newspapers and certain magazines from a general sales tax, while sales of appellant's magazine are taxed, does not violate the First Amendment rights of the appellant?

Opinions Below

The opinion of the Arkansas Supreme Court entered October 14, 1985, the supplementary opinion on rehearing of the same court entered November 18, 1985, the ruling of the Commissioner of Revenue denying appellant's claim to respond, the opinion of March 29, 1985, and the Order of April 15, 1985 of the Chancery Court of Pulaski County, Arkansas, are set out in the Appendix hereto. The opinion and supplementary opinion of the Arkansas Supreme Court are each reported as *Ragland, Commissioner v. Arkansas Writers' Project, Inc.*, 697 S.W.2d 94 (1985) and 698 S.W.2d 802 (1985), respectively.

Jurisdiction

This action for state sales tax refund, declaratory judgment, and injunctive relief draws in question the validity of Arkansas Statutes Annotated Section 84-1904(f) and 84-1904(j) on the ground that the exemption of newspapers and certain magazines from general sales tax, while the magazine published by appellant is subject to general sales tax, is reugnant to the freedom of speech and freedom of the press clauses of the First Amendment to the Constitution of the United States. The "newspaper exemption" in Section 84-1904(f) exempts sales of newspapers from the general sales tax. The "magazine exemption" in Section 84-1904(j) exempts "religious, professional, trade and sports journals and/or publications printed and published within this State...when sold through regular subscriptions." The appellant's magazine, *Arkansas Times Magazine,* is a general interest monthly magazine. It is not a newspaper, nor is it a religious, professional, trade or sports publication.

The federal constitutional questions were timely raised by appellant when appellant petitioned the appellee, who is the Commissioner of Revenue for the State of Arkansas, for a refund of sales tax paid on sales of its general interest monthly magazine, *Arkansas Times Magazine,* and appellant has continuously raised the issues on appeal. On April 15, 1985, the Chancery Court of Pulaski County, Arkansas, without considering the constitutional issues, ruled in favor of appellant, construing the "magazine exemption" contained in *Ark. Stat. Ann.* §84-1904(j) to exempt all publications printed and published within the state. Since the ruling was based on a statutory construction, the court did not consider the constitutional issues. On October 14, 1985, the Arkansas Supreme Court reversed, finding, first, that the "newspaper exemption" did not apply, since *Arkansas Times* is not a newspaper, and, second, that the lower court's construction of *Ark. Stat. Ann.* §84-1904(j) was incorrect, and that only religious, professional, trade and sports publications were exempt. The court incorrectly stated that the constitutional issues had not been raised. On petition for rehearing, which brought the constitutional issues to the court's attention, the Arkansas Suprme Court issued a supplemental opinion upholding the validity of the statutes exempting newspapers and certain magazines from the sales tax and the imposition of sales tax on sale of *Arkansas Times.* Notice of appeal to the U.S. Supreme Court was timely filed on February 10, 1986.

The jurisdiction of the U.S. Supreme Court to review this decision of the Supreme Court of Arkansas on appeal is conferred by 28 U.S.C. Section 1257 (2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469, 43 L.Ed.2d 328, 95 S.Ct. 1029 (1975); *Mills v. Alabama,* 384 U.S. 214, 16 L.Ed.2d 484, 86 S.Ct. 1434 (1966).

Constitutional and Statutory Provisions

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.

The first clause of the second sentence of the Fourteenth Amendment of the United States Constitution provides:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..."

Ark. Stat. Ann. §84-1904 exempts from the Gross Receipts Tax (Sales Tax) imposed (by *Ark. Stat. Ann.* §84-1903) on all sales of tangible personal property numerous items, including:

> "...(f) Gross receipts or gross proceeds derived from

the sale of newspapers...
"(j)...religious, professional, trade and sports journals and/or publications published and printed within this State...when sold through regular subscriptions."

Statement of the Case

This is an appeal from a decision of the Arkansas Supreme Court upholding the validity of two exemptions from the Arkansas Gross Receipts Tax. One exemption exempts newspapers, and the other exemption exempts religious, sports, professional and business journals when sold through regular subscriptions. Other publications are not exempt.

The appellant, Arkansas Writers' Project, Inc., an Arkansas corporation, publishes *Arkansas Times Magazine,* a general interest monthly magazine with circulation of approximately 25,000. Under the Arkansas Supreme Court's ruling, appellant must pay sales tax on sales of *Arkansas Times,* even though sales of newspapers and sports, religious, business, etc. magazines are exempt from tax.

Arkansas Times publishes many articles of the same type appearing in newspapers and in religious, sports, professional and trade journals. It competes with such publications for sales of advertising. Distribution of *Arkansas Times,* through subscriptions and over-the-counter sales, is identical with other publications. Its postage rates are the same. The frequency of publication of magazines may be weekly or less often. Newspapers are generally published daily, weekly or bi-weekly, but may be published less frequently. The method of production of all publications is similar.

This litigation commenced in 1980 when the Arkansas Commissioner of Revenue, the appellee herein, performed a sales tax audit on appellant. Appellant contested the assessment through the administrative process, including a court appeal. Appellant and appellee settled the case in September, 1982, and appellant agreed to pay sales tax, subject to a right to raise the issue again if there were a change in the law or a court ruling bringing into question

the validity of the tax exemption structure.

In 1983, this Court ruled in *Minneapolis Star & Tribune Company v. Minnesota Commissioner of Revenue,* 460 U.S. 575, 75 L.Ed.2d 295 (1983), that a Minnesota use tax on paper and ink used in the production of newspapers which exempted the first $100,000 annually for paper and ink was unconstitutional.

Following this decision, on January 20, 1984, appellant, in accordance with proper administrative procedure, brought a claim for refund of taxes paid after October, 1982. It claimed (1) that the "magazine exemption" should be construed to exempt sales of *Arkansas Times*; and (2) that taxation of sales of *Arkansas Times* when sales of newspaper and other magazines were exempt from tax violated appellant's First Amendment rights. Appellee, acting within his jurisdiction, denied the claim for refund. Appellant pursued a proper appeal to the Pulaski Chancery Court. The Chancery Court interpreted the "magazine exemption" to include all sales of *Arkansas Times,* and thus did not reach the constitutional issues. Appellee appealed to the Arkansas Supreme Court, which held in its opinion of October 14, 1985 that the Chancery Court had erred in its construction of the "magazine exemption" statute, and that the "magazine exemption" did not exempt sales of *Arkansas Times,* but applied only to religious, sports, professional and trade journals. The Arkansas Supreme Court did not, however, consider the constitutional issues which had been continually raised. On petition for rehearing, the Arkansas Supreme Court issued a supplementary opinion on November 18, 1985, considering the constitutional issues and finding that the taxation of sales of *Arkansas Times* was constitutional, in spite of the fact that sales of newspapers and other magazines were exempt from sales tax.

In discussing appellant's argument that the imposition of tax on sales of *Arkansas Times,* while sales of newspapers and other magazines were exempt from taxation, infringed upon appellant's freedom of speech and of the press, the Arkansas Supreme Court distinguished the *Minneapolis Star* case and another case relied upon by appellant, *Grosjean v. American Press Co.*, 297 U.S. 233, 80 L.Ed. 660 (1936), on the basis that the tax in each case

was a special tax applicable only to newspapers, while the tax in issue in this case is a general sales tax applicable to sales of all items not specifically exempt. The Arkansas Supreme Court considered the tax in this case to be an "ordinary form of taxation" for support of the government from which publications are not immune. The court also stated that, since *Arkansas Times* is not exempt from tax, it does not matter to appellant whether the exemption from taxation of other publications is valid or invalid.

The Federal Question is Substantial

The Arkansas Gross Receipts Tax is imposed on appellant's monthly magazine, while newspapers and religious, sports, trade and professional magazines are exempt from tax. The relevant Arkansas exemption statutes cause differential taxation of the press to occur, which is a serious violation of appellant's rights to freedom of speech and of the press.

In *Minneapolis Star & Tribune Company v. Minnesota Commission of Revenues,* 460 U.S. 575 (1983), this Court considered a special use tax on paper and ink consumed by newspaper which exempted the first $100,000 of paper and ink consumed. The tax was imposed in lieu of general sales tax, from which newspapers were exempt. The Minnesota legislature, in imposing the tax, had no impermissible or censorial motive.

This Court found the tax as a whole invalid because it was imposed only in the press, stating:

> "Differential taxation of the press then places such a burden on the interests protected by the First Amendment that we cannot countenance such treatment unless the state asserts a counterbalancing interest of compelling importance that it cannot achieve without differential taxation."

The Court objected even more strenuously to the exemption for the first $100,000 of paper and ink, stating:

> "When the exemption selects such a narrowly defined group to bear the full burden of the tax the tax begins to resemble more a penalty for a few of the largest newspapers than an attempt to favor struggling smaller enterprises."

All but two justices participating in the *Minneapolis Star* case joined in the majority opinion. Mr. Justice White concurred, joining in the portion of the majority opinion dealing wth the $100,000 exemption. On that issue, he stated that the exemption alone was sufficient reason to invalidate the tax, because it limited the burden of the tax to only a few newspapers.

The taxing structure in Arkansas has the same effect, since the legislature has seen fit to exempt all newspapers and many magazines, while other magazines are subject to taxation. Thus, as in *Minneapolis,* only a few publishers are subject to taxation. Particularly in light of the many similarities between newspapers and magazines, there is no rational reason, let alone a "compelling state interest," in distinguishing between the two types of publications.

In summary, the differential system of taxation of periodical publications in Arkansas is a serious violation of appellant's rights to freedom of speech and of the press, and the opinion of the Arkansas Supreme Court is impossible to justify on any reasoned basis and merits swift, summary reversal by this Court.

Conclusion

The decision below upholding the differential exemption from taxation of newspapers and certain magazines should be summarily reversed and sent back for to the Arkansas Supreme Court to award a refund to appellant of taxes paid and to decide whether the exemption of newspapers and certain magazines from taxation should be invalidated or extended to appellant's magazine, and whether appellant should be awarded attorney's fees under 42 U.S.C. §1988. Alternatively, this appeal should be awarded plenary review.

BEST AVAILABLE COPY

Respectfully submitted

HOUSE, WALLACE, NELSON & JEWELL, P.A.
1500 Tower Building
Little Rock, Arkansas 72201
(501)3759151

By: John R. Clayton

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served three copies of the foregoing Jurisdictional Statement on Joseph V. Svoboda, Attorney for appellee, at Department of Finance & Administration, P.O. Box 1272-L, Little Rock, Arkansas, 72201 by placing same in the U.S. mail, first class postage prepaid, this 14 day of February, 1986. There are no other parties to the proceeding.

John R. Clayton

APPENDIX

Ragland, Appellant
v.
Arkansas Writers' Project, Appellee;
Arkansas Supreme Court No. 85-115;
Opinion October 14, 1985

GEORGE ROSE SMITH, J. The appellee, Arkansas Writers' Project, is the publisher of the *Arkansas Times Magazine,* a monthly magazine devoted to matters of general interest. Claiming a tax exemption, the appellee brought this suit for the refund $15,838.22 which it had paid as sales tax on the sale of its magazine during a period of three years. The chancellor held that the sales were tax exempt and ordered a refund. The appeal comes to this court under Rule 29(1)(c).

The sales tax statute, as revised in 1941, contained an exemption for the proceeds from the sale of newspapers. *Ark. Stat. Ann.* §84-1904(f) (Repl. 1980). It also contained an exemption for the proceeds from the sale of advertising space in newspapers and publications and billboard advertising services. §84-1904(j). By Act 152 of 1949 the legislature added to that subsection the following proviso, the proper construction of which is the decisive question in this case:

> Provided, further, that religious, professional, trade and sports journals and/or publications printed and published within this State, shall be exempt when sold through regular subscriptions.

In the trial court it was stipulated that the *Arkansas Times Magazine* is not a newspaper nor a religious, professional, trade, or sports journal. The magazine, however, is printed and published in Arkansas and is sold primarily by mail subscriptions.

The chancellor concluded that in the controlling sentence the words "and/or" have the effect of creating two separate exempt

categories, which he paraphrased in his written opinion as follows: "(1) Religious, professional, trade and sports journals; and (2) publications printed and published within Arkansas." in that view the *Arkansas Times* is a publication printed and published in Arkansas, so that the proceeds from its sale are tax exempt.

We cannot agree with the trial court's conclusion. As we read the sentence, the legislature intended to create not two exemptions but only one, which was fully described. In several opinions we have joined many other courts in condemning the lack of precision in the phrase "and/or." *Boren v. Qualls,* 284 Ark. 65, 680 S.W.2d 82 (1984), citing prior cases. Here we are not persuaded that "and/or" was used to awkwardly divide the whole sentence and create separate exemptions having no apparent basis for their separate existence. We think instead that the lawmakers had a single purpose in mind. That was to exempt the enumerated periodicals if printed and published in Arkansas and sold by subscription and if the particular periodical comes within the term journal or the term publication or the two terms considered together. Under that reading of the statute the *Times* is not exempt, for it is admittedly not a religious, professional, trade, or sports periodical.

We regard the legislative intention as not being open to serious doubt, but even if that were not true our reading of the statute is confirmed by two familiar rules of construction. One, an exemption from taxation is to be strictly construed against the exemption; to doubt is to deny the exemption. *S.H. & J. Drilling Corp. v. Qualls,* 268 Ark. 71, 593 S.W.2d 178 (1980). Two, an interpretation that has long been given to a statute by the executive department will not be disregarded unless it is clearly wrong. *Walnut Grove Sch. Dist. No. 6 v. County Bd. of Education,* 204 Ark. 354, 162 S.W.2d 64 (1942). The Commissioner's Regulation GR-48(E) correctly interprets the statute:

> The gross receipts or gross proceeds derived from the sale of any books, magazines, or publications other than newspapers are subject to the tax; except that religious, professional, trade and sports journals or publications printed and published in Arkansas are exempt when sold through regular subscriptions.

In closing, we add that neither party has questioned the constitutionality of the exemption and that our disposition of the direct appeal makes it unnecessary for us to reach the cross appeal.

Reversed.

Purtle, J., not participating.

Ragland, Appellant
v.
Arkansas Writers' Project, Inc., Appellee;
Arkansas Supreme Court No. 85-115;
Supplementary Opinion on Rehearing;
November 18, 1985

GEORGE ROSE SMITH, J., on rehearing. In our original opinion the decree was reversed on a question of statutory construction. In its petition for rehearing the appellee does not reargue that issue, but it does insist that we should have discussed the constitutionality of the imposition of a sales tax on the sales of the *Arkansas Times Magazine.* That issue was argued by the appellee on its cross appeal, seeking attorney's fees, but the argument was incorporated by reference in the response to the direct appeal and should have been discussed.

The constitutional contention is twofold. It is first said that to exempt certain sports publications from the sales tax but to tax the sales of the *Times* is a denial of equal protection. We need not explore this point, for it would avail the appellee nothing if it wins its argument. The legislature has levied a valid sales tax that is applicable to the *Times.* It is immaterial that an exemption in favor of some other taxpayer may be invalid, as discriminatory. If so, it is the exemption that would fall, not the tax against the *Times.* The courts cannot create a tax exemption; that must be done by the legislature. It has not exempted the *Times.*

It is also argued that a tax on the sales of the *Times* is an infringement upon its freedom of speeech and of the press. Two cases are primarily relied upon, but neither addressed the validity of a tax comparable to an ordinary sales tax. *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue,* 460 U.S. 575 (1983); *Grosjean v. American Press Co.,* 297 U.S. 233 (1936). In fact, *Grosjean* supplied the answer to the appellee's contention. The Court said that the owners of newspapers are not immune from any of the "ordinary forms of taxation" for support of the government. That statement applies with even greater force to the *Times,* a monthly magazine publishing matters of general interest. Certainly the *Times* has no greater claims to tax exemptions than has, say, a publisher of books. Both are exercising First Amendment rights, but it would not be seriously argued that they are exempt from income taxes, property taxes, and other exactions levied to pay for the cost of government. No authority has been cited applying a different rule to the sales tax; we are confident that no such authority exists.

We do not reach the cross appeal, for the *Times* is not entitled to an attorney's fee when it loses its case.

The petition for rehearing is denied.

Purtle, J., not participating.

Decision of Arkansas Commissioner of Revenues,
March 9, 1984,
in response to Appellant's claim for refund

The following represents my decision on the claim for refund filed by you on January 20, 1984 on behalf of the captioned taxpayer. In reaching my decision I have carefully considered your brief and the brief of the Department of Finance and Administration.

The claim for refund is predicated on the assertion that *Arkansas Times Magazine* is entitled to an exemption from sales tax under the provisions of *Ark. Stat. Ann.* §84-1904(f) and/or §84-1904(j) and to deny either exemptions will violate the First

and Fourteenth Amendments of the U.S. Constitution.

Your first argument is that *Times Magazine* is in fact a newspaper and therefore should be exempt under §84-1904(f). As a factual matter I find a very definite distinction between "newspapers" and "magazines" and each form a separate classification. Legislative classification is legally permissible and the Fourteenth Amendment only prohibits classification which amounts to invidious discrimination. I do not find that a distinction drawn between newspapers and magazines amounts to invidious discrimination therefore cannot find a violation of the Fourteenth Amendment.

Your have also argued that the Department's interpretation of §84-1904(j) also violates/infringes on the freedom of speech and the press. After considering the case of *Hardin v. Vestal,* 204 Ark. 492, 162 S.W.2d 923, I am of the opinion that the more limited interpretation advanced by the Department of this exemption is legally correct. To agree with *Time's* interpretation, I would be required to find that there was no rational reason for the Arkansas Legislature to specify "religious, professional, trade or sports" publications versus any other publication. I am mindful also of the long line of Arkansas cases which hold that tax exemptions are to be strictly construed against the party claiming same and that to doubt entitlement is to deny the exemption.

I do not agree with the conclusion drawn from the case of *Minneapolis Star* since it ignores the very basic and important distinction. That case involved a specific tax provision on newspapers alone. The tax imposing provision of the Arkansas Sales Tax (*Ark. Stat. Ann.* §84-1903) is on all tangible personal property and makes no express mention of either newspapers or magazines.

Although the foregoing is dispositive of the two arguments advanced in support of the refund, there is a further facet that needs to be addressed. *Times* argues that both of the foregoing exemptions are unconstitutional by virtue of their effect and yet *Times* should be entitled to the benefits thereunder. If both exemptions are unconstitutional I could not grant the refund but rather be required to remove the exemption granted to newspapers under §84-1904(j). The final result would not be to allow a refund to

Times but rather remove the exemption from those numerated classes of publications.

For purposes of the record, I must also point out that I am only able to verify that for the period covered by the refund claim, *Times* paid the amount of $9,153.80 in sales tax rather than $10,809.69.

For the foregoing reasons, the captioned claim for refund is hereby denied. This decision exhausts your administrative remedies under Act 401 of 1979.

It is so ordered this 9th day of March, 1984.

Arkansas Writers' Project, Inc., Plaintiff
v.
Ragland, Defendant;
Pulaski County Chancery Court No. 84-1268
Opinion of Chancellor Bruce T. Bullion,
March 29, 1985

You present the question as to the applicability of the Arkansas Gross Receipts Tax (tax) to the sale of the monthly magazine printed and published in Arkansas by the plaintiff(t). In the process of your arguments you delve into the issues of statutory construction and constitutionality of the tax, and your briefs are of excellent quality. The sections of this law that by this action you ask to be construed are 84-1904(f) and (j). My result requires consideration of, only 84-1904(j) which reads:

> "There is hereby specifically exempted from the tax...the following:...(j) gross proceeds derived from the sales of advertising space in newspapers and publications and billboard advertising services. Provided further, that religious, professional, trade and sports journals and/or publications printed and published within this State shall be exempt when sold through regular subscriptions."

This is a rather long-standing dispute between T and the defendant (DFA), and in 1982 a prior suit between them was settled and dismissed under an agreement that DFA urges, in a mild way, estops T from bringing this action. No part of the tax period involved in that prior action is evolved in the present one, and I do not think that T is any way prevented or hampered to bring this action by that principle, or any other that I know about.

T. argues that the portion of 84-1904(j) that entitles it to the exemption from the tax is the language that reads:

> "...and/or publications printed and published within this State shall be exempt when sold through regular subscriptions."

The stipulated facts established that the monthly magazine of T is printed and published within this State, and that about 80 percent of the monthly sales are to regular subscribers. The remaining 20 percent of its sales are divided between vending boxes similar to those used by newspapers, and sales to retailers for their over-the-counter sale.

DFA argues that the proper interpretation of 84-1904(j) establishes two exempt categories, paraphrased as follows:

> 1) religious, professional trade and sports journals. (emph. added)....; and
> 2) religious, professional, trade and sports publications. (emph. added).

On the other hand T argues that the proper interpretation establishes two exempt categories, paraphrased as follows:

> 1) Religious, professional, trade and sports journals; and
> 2) publications printed and published within Arkansas.

It will be noted that the word "publications" appears twice within this statute; first, in relation to advertising sales and services, and

secondly, in relation to "...publications printed and published within this State...." The construction urged by DFA ignores the language structure of the statute and reorganizes this legislative language in an unwarranted manner. It is sort of like reaching to conclusion, and then dreaming up false premises to try and justify that result. In this process DFA attaches a meaning to the work "journal" that is not reasonable, except perhaps in stilted understandings of former days, i.e., a daily record, or, events written down regularly or as they occur.

In 1981, DFA promulgated its Regulation GR-48 which, among other things, defines certain words used in this section including the word "publication", which is:

> "Any pamphlet, magazine, journal, or periodical, other than a newspaper, designed for the information or entertainment of the general public, or any segment."

That is to say, DFA recognizes, except here, that the words "journal" and "publication" are synonymous, and that both include the term "magazine" within their meaning. To emphasize this, all one needs do is to look at the magazine "ABA Journal - The Lawyers Magazine."

The language of 84-1904(j) very plainly provides that the category:

> "...publications printed and published within this State..."

are exempt from this tax, and I so hold.

DFA has mentioned in its writings that if this construction is reached, that T is not entitled to the claimed refund because all of its sales are not made by subscriptions (only some 23,000 of 28,000), and that there is no evidence to indicate, or prove, the exact amount of the claimed $15,000, plus, wrongfully collected on T's subscription sales. That is to say, DFA advances the argument that in any event T is exempt only on its subscription sales

by virtue of the language in the statute "...when sold through regular subscriptions."

There is a method by which this amount can be reached upon the evidence in this record, but I conclude this is not necessary as the entirety of its sales are exempt. The method available is that it is reflected in the evidence that 80 percent (rounded) of T's sales are by subscriptions, and one need only to take 80 percent of the $15,000 (rounded), and the subscription sales tax is ascertained. But, I conclude that the language "when sold through subscription sales" is descriptive, and not words of limitation. Otherwise, the tax is measured by a method of selling, which is not the scheme of this tax at all, and results in a finding of legislative action little short of frivolous. I reach this result with full consciousness of the well-founded principle that tax exemptions are construed most strongly against the taxpayer, but I conclude that there is no reasonable doubt that requires its application.

The result I have reached makes it unnecessary to consider the constitutional arguments advanced by T, and also the problem of attorney fee award under 42 U.S.C. Sec. 1983/1988. Counsel for T will prepare an appropriate precedent in line with the above finding that the sales of its magazine is specifically exempted from the incidence of this tax and submit a copy to counsel for DFA, for comment, prior to presenting it to me for signature and entry of record. Again I express my thanks to the both of you for your fine help.

Arkansas Writers' Project, Inc., Plaintiff
v.
Ragland, Defendant,
Pulaski County Chancery No. 84-1268
Order of April 15, 1985

On March 29, 1985, the parties came before the Court pursuant to a Stipulation of Facts, Affidavits on behalf of Plaintiff, and Briefs of both parties.

After consideration of the facts presented to the Court, the Court finds:

1. *Arkansas Times Magazine* is a monthly magazine published by Plaintiff in Little Rock, Arkansas.

2. Sales of *Arkansas Times Magazine* are exempted from Arkansas Gross Receipts Tax pursuant to *Ark. Stat. Ann.* §84-1904(j).

3. Plaintiff is entitled to a refund of sales tax paid on sales of *Arkansas Times Magazine* from October 1, 1982, through the present date.

4. The amount of such taxes from October, 1982 through July, 1984 is $15,838.22 and Plaintiff is entitled to a refund of any taxes paid since July, 1984.

5. Plaintiff is entitled pursuant to *Ark. Stat. Ann.* §84-4708 to interest on all overpayments at the rate of 10 percent per annum, and to its court costs in the amount of $39.55.

6. The Defendant should be enjoined from assessing taxes on sales of *Arkansas Times Magazine* in the future.

WHEREFORE, the Court hereby Orders the Defendant to refund the Plaintiff all sales tax on *Arkansas Times Magazine* from October 1, 1982 to the present date, with interest thereon from the date paid by Plaintiff until the date Defendant refunds such taxes, at the rate of 10 percent per annum, and court costs in the amount of $39.55, and the Defendant is permanently enjoined from assessing sales tax on future sales of *Arkansas Times Magazine*.

IT IS SO ORDERED this 15th day of April, 1985.

ARKANSAS SUPREME COURT
NO: 85-115

CHARLES D. RAGLAND,
COMMISSIONER OF REVENUE
APPELLANT

V.

ARKANSAS WRITERS' PROJECT, INC.
APPELLEE

NOTICE OF APPEAL

Notice is hereby given of the appeal by Arkansas Writers' Project, Inc., Appellee, of the judgement of this court of October 14, 1985, as supplemented on rehearing of November 18, 1985, to the United States Supreme Court pursuant to 12 U.S.C. §1257(2) this 12th day of February, 1986.

HOUSE, WALLACE, NELSON & JEWELL, P.A.
1500 Tower Building
Little Rock, Arkansas 72201
(501)375-9151

By:/s/ John R. Clayton
Attorney for Arkansas Writers' Project, Inc.

PROOF OF SERVICE

The undersigned hereby certifies that the foregoing Notice of Appeal was served on Joseph V. Svoboda, Attorney for Charles D. Ragland, Commissioner, at Department of Finance & Adminstration, P.O. Box 1272-L, Little Rock, Arkansas, by plac-

ing same in the U.S. Mail, first class postage paid, this 12th day of February, 1986.

/s/ John R. Clayton